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**Cc:** 'Amron, Susan'[samron@law.nyc.gov]; Mehran, Reyhan (NOAA)[Reyhan.Mehran@noaa.gov]; 'ian.beilby@dec.ny.gov'[ian.beilby@dec.ny.gov]; Kwan, Caroline[kwan.caroline@epa.gov]; Schmidt, Mark[schmidt.mark@epa.gov]; Vaughn, Stephanie[Vaughn.Stephania@epa.gov]; Mintzer, Michael[Mintzer.Michael@epa.gov]; Naranjo, Eugenia[Naranjo.Eugenia@epa.gov]; 'Leonard, Edward L.'[leonardel@cdmsmith.com]; 'Mayo, Joseph'[MayoJJ@cdmsmith.com]; 'Cooke, Daniel W.'[cookedw@cdmsmith.com]  
**From:** Weissbard, Ron  
**Sent:** Thur 3/16/2017 6:23:43 PM  
**Subject:** RE: Newtown Creek: BERA Dispute Meeting

Michael,

They City has a concern on the issue of Benthic Macroinvertebrates and Confounding Factors, previously disputed by NCG but now considered resolved.

EPA's original direction to NCG was to remove language on confounding factors. The City has previously provided comments that the NCG analysis (based on mineral oils/C19-C36 hydrocarbons) is arbitrary and inaccurate. During the course of the dispute AQ did not provide any additional material on the confounding factors, but changed the basis of removing stations to a (seemingly arbitrary) geographic basis and indicated the final document would provide further explanation along with an evaluation of the relative scientific merits of the different lines of evidence.

Based on the original inadequate analysis provided by AQ/NCG and the numerous experiences throughout the RI/FS process of AQ/NCG re-submitting documents that remain deficient, this issue should not be considered resolved. It might be more expedient if EPA developed specific language or a different process to workshop what the revised document should contain. Otherwise, in 30 or 45 days we will likely be dealing with a deficient document and similar dispute.

The City will be providing a (short) memo on concerns with the AQ/NCG approach, however we wanted to flag this issue in particular since it is now considered resolved and is not included in the list of topics for next week. The City would like to discuss this issue with the EPA next week.

Thanks

Ron Weissbard, P.E./Acting Director of Superfund

NYC Environmental Protection/Sustainability

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**From:** Sivak, Michael [mailto:Sivak.Michael@epa.gov]

**Sent:** Tuesday, March 14, 2017 3:36 PM

**To:** Tom Schadt <tschadt@anchorqea.com>; David Bridgers <David.bridgers@wallerlaw.com>

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**Subject:** Newtown Creek: BERA Dispute Meeting

The final planned meeting to discuss the issues under dispute for the Newtown Creek BERA is scheduled for March 21 at 2 PM at 666 Fifth Avenue, 26th Floor, Conference Room D/E, New York City. Based on the recent summary submitted by AQ on March 9, 2017 and a review of the letter from David Bridgers dated December 22, 2016 invoking dispute resolution, there are four technical issues and one administrative issue that remain unresolved and in dispute by the NCG. These issues are:

Technical issues:

- Reference areas
- 10-day Sediment toxicity test results
- Wildlife exposure modifying factors
- Selection of tissue thresholds

Administrative issue:

- Due date for submittal of revised BERA

The meeting is scheduled for two hours. As there has been significant discussion between EPA and AQ on these issues since the initial meeting to discuss the dispute, there is a need for both AQ, on behalf of the NCG, and EPA to present their current positions on these issues. I propose the following agenda, in order to address each of the outstanding issues in the dispute:

- Introduction and summary: M. Sivak (5 minutes)
- Reference areas
  - AQ discussion (10 minutes)
  - EPA discussion (10 minutes)
  - Input from all other stakeholders: NYS DEC, NOAA, FWS, NYC DEP (5 minutes)
- 10-day Sediment toxicity test results
  - AQ discussion (10 minutes)
  - EPA discussion (10 minutes)
  - Input from all other stakeholders: NYS DEC, NOAA, FWS, NYC DEP (5 minutes)
- Wildlife exposure modifying factors
  - AQ discussion (10 minutes)
  - EPA discussion (10 minutes)
  - Input from all other stakeholders: NYS DEC, NOAA, FWS, NYC DEP (5 minutes)
- Selection of tissue thresholds
  - AQ discussion (10 minutes)
  - EPA discussion (10 minutes)
  - Input from all other stakeholders: NYS DEC, NOAA, FWS, NYC DEP (5 minutes)

- Due date for submittal of revised BERA
- AQ recommendation and EPA recommendation (5 minutes)
- Summary: M. Sivak (10 minutes)

Finally, with this communication, I am extending the due date of the dispute period until March 28, one week after the meeting.

Michael Sivak

Chief, Passaic, Hackensack and Newark Bay Remediation Branch  
EPA Region 2 Superfund Program

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